THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION No. 19847 of 2006

Date 22-09-2006

Between:

Smt S.Vijayalakshmi.

..... PETITIONER

AND

The State Bank of India, rep. by its Branch Manager and another.

.....RESPONDENTS

THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION No.19847 of 2006

O R D E R :

The averments as stated in the affidavit filed in support of the writ petition are as under:

The petitioner borrowed a sum of Rs.4,00,000/- from the first respondent-bank in the year, 2001. As on 08-12-2003, she paid Rs.65,000/- and could not repay the balance. In the year 2004, the first respondent-bank issued auction notice invoking the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the Act'), proposing to sell the property in question by way of public auction. Questioning the same, the petitioner filed W.P.No.7557 of 2004. The said writ petition was disposed of by this Court permitting the petitioner to approach the Debts Recovery Tribunal, Hyderabad. Accordingly, the petitioner filed S.A.No.25 of 2004 before the Debts Recovery Tribunal, Hyderabad. The Tribunal having entertained the appeal granted interim stay on 02-07-2004 granting time to the petitioner to deposit the required Court fee. Admittedly, the petitioner failed to pay the Court fee. In the circumstances, the Tribunal, by order dated 06-02-2006, dismissed the application for stay. However, it was made clear that all the proceedings taken up by the respondent under the Act, in furtherance of the said orders, would be subject to the result of the appeal pending before the Tribunal. Subsequently, a fresh auction notice dated 22-08-2006 was published by the first respondent-bank proposing sale of the

property in question on 25-09-2006. The said auction notice is under challenge in this writ petition on various grounds.

It is contended by the learned counsel for the petitioner that the entire procedure adopted by the first respondent-bank in bringing the property in question to sale under the impugned auction notice is arbitrary and illegal and not in conformity with the provisions of the Act and the Rules made thereunder. The learned counsel pointed out that the procedure as prescribed under Rule 8(2) of the Security Interest (Enforcement) Rules, 2002, which requires the possession notice to be published in two leading newspapers, in vernacular language having sufficient circulation in that locality and that the valuation of the property sought to be sold shall be obtained by an approved valuer have not been followed. It is also contended that whereas the property in question is worth about Rs.30,00,000/- as on today, the reserve price in the auction notice is shown as Rs.8,02,000/- and, therefore, it is nothing but an attempt on the part of the first respondent-bank to snatch away the property for a paltry amount.

It is to be noted that the sale proposed under the impugned notice is one of the measures specified under sub-section (4) of Section 13 of the Act to recover the secured debt. The petitioner does not dispute the fact that she availed the loan from the first respondent-bank and the property in question is the secured asset. That apart, the proceedings initiated by the first respondent-bank under the Act have already been questioned in W.P.No.7557 of 2004 which was disposed of by this Court granting liberty to the petitioner to prefer an appeal as provided under the Act. Though availed such remedy, it appears that the petitioner failed to pay the required Court fee and on that ground, the interim stay granted by the Tribunal

stood vacated on 6-2-2006. Strangely, the petitioner does not challenge the said order but filed this writ petition questioning the consequential steps taken by the first respondent-bank.

Since on the face of it the impugned sale notice is only consequent to the order of the Tribunal, dated 6-2-2006, which has become final, I am of the opinion that this writ petition is misconceived and cannot be entertained.

The alleged lapses on the part of the respondent-bank in issuing the impugned sale notice, which involve several disputed questions of fact cannot be gone into and decided by this Court in exercise of the jurisdiction under Article 226 of the Constitution of India.

At any rate, the impugned sale notice, being one of the measures referred to in Section 13 (4) of the Act, the petitioner if aggrieved ought to have availed the alternative remedy under Section 17 of the Act, but he cannot straightaway invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

Viewed from any angle, the writ petition is without merit and the same is accordingly dismissed. No order as to costs.

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22-09-2006

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